IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 937 of 1995
in
SPECIAL CIVIL APPLICATION NO 2270 of 1982
with
CIVIL APPLICATION NO 2361 of 1995
and
CIVIL APPLICATION NO 232 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

DR.KUMAR MOHANLAL MEHTA

Appearance:

1. LETTERS PATENT APPEAL No. 937 of 1995

MR KT DAVE, AGP, for Appellant No.

MR SHIRISH JOSHI for Respondent No. 1-3,5-8,11-13

..... for Respondent No. 4,9-10,14-16

MR HASIT H JOSHI for Respondent No. 8

MR ND GOHIL for Respondent No. 17,21-201

MR IS SUPEHIA for Respondent No. 18-20,202-220

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 17/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. Dr.Kumar Mohanlal Mehta and other Doctors original petitioners, working in the Ayurvedik Clinics at different places in Amreli & Junagadh Districts, had challenged the action of the Authority of up-grading/ promoting about 114 Doctors belonging to the Government Dispensaries before this Court by way of writ petition i.e. Special Civil Application No.2270/82 on various grounds. Learned Single Judge (K.R.Vyas,J.) by his Judgment and order dated 14.6.1994 allowed the writ petition and directed the respondents - Authority to consider their case for promoting them to class - II cadre with effect from 2.11.1979 and fix their seniority accordingly and also pay other consequential benefits in accordance with law within a period of 3 months from the date of receipt of the order. Aggrieved by this order the Appellants - State of Gujarat, the Secretary, Panchayat Department, The Director of Ayurved & Homeopathy, Gandhinagar, have filed this Appeal.

Along with the LPA, Civil Application No.2361 of 1995 was filed seeking interim relief to stay the execution, implementation and operation of the Judgment and order dated 14.6.1995, passed by the learned Single Judge, allowing Special Civil Application No.2270 of 1982, filed by the original petitioner. However, it seems that the Appellants - applicants have not bothered to invite any orders on it and, therefore, after filing of the said Application in 1995 the same is pending till today without any orders passed on it. Be that as it may.

2. From the order sheet of main LPA it appears that the said Appeal was adjourned from time to time and for the first time only on 20.1.1998 the Division Bench of this Court ordered to post it for final disposal on 29.1.1998, but thereafter it could not be heard till today for some or the other reasons.

3. Civil Application No.232 of 1998 is filed by the Applicants - original petitioners No.3 & 5 in 1998 seeking implementation of the Judgment and order passed by the learned Single Judge on 14.6.1995 in main Special Civil Application No.2270 of 1982. However, we find from

the order-sheet of the Application that it was ordered to be posted along with main Appeal on 28.1.1998. But, thereafter no further order was passed on it. This Application is required to be disposed of on the statement being made at the bar by learned AGP Shri Dave for the Appellants - State of Gujarat that in absence of any interim order passed on Civil Application for stay the Appellants State of Gujarat and others have already implemented the Judgment and order of learned Single Judge and has also given effect. However, the learned Counsel Shri Supehia, appearing for the Applicant - original petitioners No.3 & 5 in Civil Application No.232 of 1998 submitted that the Judgment and order passed by the learned Single Judge, allowing the main petition, is not given full effect. As we are not inclined to interfere with the Judgment and order, passed by the learned Single Judge, allowing the main writ petition. With the dismissal of main LPA, even if the Judgment and order passed by the learned Single Judge is not fully complied with, then the same has to be complied with by the Appellants - State of Gujarat and others. Therefore, this Civil Application for implementation of the order would not survive any more and accordingly it is disposed of.

4. This brings us to the main LPA. It is filed by the Appellants - State of Gujarat and others against the Judgment and order dated 14.6.1995, passed by the learned single Judge, allowing the main Special Civil Application No.2270 of 1982. It is clear from the Judgment of the learned Single Judge that under the guise of administrative exigency they had initially up-graded 114 posts in 1979 and given promotion to 114 persons in 1983 to those persons who were working in the Government Dispensaries with effect from 2.11.1979, the day on which the posts were up-graded by over-looking the claim of the original petitioners who were also similarly situated to those 114 persons also. It is clear from the fact that the decision was already taken by the State Government to combine both the cadres of Vaidyas belonging to Panchayats and the Government Dispensaries. In fact, provisional seniority list was published on 4.10.1977 and a common seniority list was published on 30.11.1981. In that view of the matter, in our considered opinion, the learned Single Judge was absolutely right in holding that there was no necessity nor any reason to take decision to promote Vaidyas belonging to Government Dispensaries ignoring the claim of Vaidyas belonging to Panchayat Dispensaries.

5. Having gone through the judgment and order passed

by the learned Single Judge, allowing the main writ petition in favour of the original petitioner, even the learned AGP Shri Dave was not in a position to assail the same in view of the solid and cogent reasons assigned in it. Once the decision was taken to combine both the grades belonging to the Government Dispensaries and Panchayat Dispensaries and the combined seniority list was also prepared then there was no reasons on the part of the State Government to ignore the claim of Vaidyas in Panchayat Dispensaries. In that view of the matter we have no reason to interfere with the Judgment and order passed by the learned Single Judge allowing the writ petition in absence of interim relief granted in the Civil Application and that the appellants have already given effect to the Judgment and order passed by the learned Single Judge. It may be that Appellants State Government and others have given effect to the Judgment of the learned Single Judge subject to the out come of the Appeal, but that would not make any difference as we are more than convince that the Appellants have no case on merit in this Appeal.

6. In view of the above discussion, this main LPA fails and is hereby dismissed. Once the main Appeal is dismissed then Civil Application No.2361 of 1995 for stay has to be rejected and accordingly it is rejected. Once, we have dismissed the Appeal there is no question of passing any further orders on Civil Application No.232 of 1998, filed by the original petitioners No.3 & 5 seeking implementation of the judgment and order passed by the learned Single Judge. If the Judgment is not fully complied with then it is the duty of the State Government and others to fully comply with the same. Not complying the judgment and order passed by the learned Single Judge, confirm in LPA, may constitute Contempt. With this observation, Civil Application No.232 of 1995 is also disposed of. No order as to costs.

(B.J.Shethna, J.)

Date : January 17, 2005

(Sharad D.Dave, J.)

sas